

LEGAL NOTICE
Notice of Proposed Rulemaking
Public Hearing

Pursuant to Chapter 91, Hawaii Revised Statutes (HRS), notice is hereby given that the Department of Labor and Industrial Relations (DLIR) will hold public hearings to amend Title 12, Chapter 12, Hawaii Administrative Rules (HAR), relating to Prepaid Health Care, Title 12, Chapter 10, HAR, relating to Workers' Compensation, Title 12, Chapter 14, HAR, relating to Vocational Rehabilitation, Title 12, Chapter 15, HAR, relating to the Workers' Compensation Medical Fee Schedule, and billing codes in Exhibit A, Workers' Compensation Supplemental Medical Fee Schedule. The hearings will be held on the following date, times, and location:

HONOLULU, OAHU	December 13, 2010; 8:00 a.m. (Prepaid Health Care) December 13, 2010, 9:00 a.m. (Workers' Compensation, Vocational Rehabilitation, Medical Fee Schedule) Keelikolani Building 830 Punchbowl Street Rooms 310, 313, and 314 Honolulu, Hawaii 96813
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The proposed amendments to Sections 12-12-60 and 12-12-61, HAR, relating to Prepaid Health Care (PHC), will eliminate the employers' and health care contractors' requirement to file annual reports with the Department of Labor and Industrial Relations (DLIR). The proposed amendments to Section 12-12-63 of the PHC Law will also eliminate the employer's requirement to file employee health care waiver forms (Form HC-5) with the DLIR. Employers are still required to maintain these records which must be made available to the DLIR upon request.

The proposed changes to the Prepaid Health Care rules in Title 12, Chapter 12 include the following:

1. Subsections 12-12-60(b)(c)(d), HAR, Health care contractors and Section 12-12-61, HAR, Employers, are amended to delete certain reporting requirements. However, the health care contractors are still required to file reports with the DLIR to confirm employers' purchase or cancellation of required health care coverage under subsection 12-12-60(a) to ensure that employers are in compliance with our Prepaid Health Care Act.
2. Section 12-12-63, HAR, Other employer reports, is amended to delete the requirement that employers must file the original Form HC-5 with the Director. Employers will still be required to have eligible employees wishing to waive health care coverage complete a Form HC-5 annually and keep the original signed forms in their files and provide a copy to the employee.

The proposed amendments to the Workers' Compensation Rules in Title 12, Chapter 10 and the Vocational Rehabilitation Rules in Title 12, Chapter 14 are to comply with changes in the workers' compensation law, chapter 386, specified in Act 11 (S.B. 1808, S.D. 1, H.D. 1, C.D. 1),

passed by the 2005 Special Session of the Legislature, effective July 12, 2005. In addition, a change is being proposed to section 12-14-36, HAR, in response to the Hawaii Supreme Court's decision in Capua v. Weyerhaeuser, 117 Haw. 439 (2008). The proposed changes to the Workers' Compensation Medical Fee Schedule in Title 12, Chapter 15, and Exhibit A are to comply with section 386-21(c), HRS, that requires the Director to update the schedules every three years or annually, and in response to requests for changes to the billing codes for workers' compensation medical fees and services.

The proposed changes to the Workers' Compensation rules in Title 12, Chapter 10 include the following:

1. Section 12-10-1, HAR, Definitions, is amended. Definitions of "Able to resume work" and "Attending physician" are as defined in section 386-1, HRS.
2. Section 12-10-65, HAR, Depositions, is repealed and currently included in subsection 386-86(e), HRS.
3. Section 12-10-66, HAR, Subpoenas, is repealed and currently included in subsection 386-86(f), HRS.
4. Subsection 12-10-69(b), HAR, Attorney's fees, is deleted and currently included in section 386-94, HRS.
5. Section 12-10-94, HAR, Self-insurance, application; duration; cancellation; revocation, is repealed and currently included in section 386-121, HRS.

The proposed changes to the Vocational Rehabilitation rules in Title 12, Chapter 14, include the following:

1. Section 12-14-1, HAR, Definitions is amended. "Suitable gainful employment", "Vocational rehabilitation plan" or "plan", and "Vocational rehabilitation services" or "services" are as defined in section 386-1, HRS.
2. Section 12-14-4, HAR, Initial evaluation required prior to submittal of vocational rehabilitation plan, is repealed and currently included in subsection 386-25(d), HRS.
3. Section 12-14-5, HAR, Criteria for an approved vocational rehabilitation plan, is repealed and currently included in subsections 386-25(e) through 386-25(j), HRS.
4. Section 12-14-36, HAR, Termination of right to vocational rehabilitation, is amended to delete the provision providing that an injured employee who already received a permanent partial disability award waived the right to vocational rehabilitation services.
5. Section 12-14-48, HAR, Reconsideration and hearing, is repealed in the rules and currently included in subsections 386-25(n) and 386-25(o), HRS.

The proposed changes to the Workers' Compensation Medical Fee Schedule rules in Title 12, Chapter 15, include the following:

1. Section 12-15-1, HAR, Definitions, amends the definition of "Attending physician" and "Therapist", adds new definitions of "Emergency medical services" and "Guide" or "guidelines" in the Workers' Compensation Medical Fee Schedule to comply with the definitions in section 386-1, HRS and to update the definition of "therapist."
2. Subsections 12-15-36(c)(d), HAR, Assistants to providers of service, is amended to include qualifications of the physical therapist assistant and the occupational therapy assistant.
3. Section 12-15-50, HAR, Emergency treatment, is amended to delete subsection (c) to comply with the definition of emergency medical services in section 386-1, HRS.
4. Section 12-15-52, HAR, Anesthesia services, is amended to allow for reimbursement to certified registered nurse anesthetists.
5. Section 12-15-55, HAR, Drugs, supplies, and materials, is amended to clarify that shipping charges is not reimbursable as a separate charge.
6. Section 12-15-90, HAR, Workers' compensation medical fee schedule, is amended as follows: a) the Workers' Compensation Supplemental Medical Fee Schedule known as Exhibit A, will be dated January 1, 2011; b) provider shall charge a fee not to exceed their lowest "usual and customary fee"; c) director may defer to a fee(s) listed in the Medicare Health Care Financing Administration Common Procedure Coding System (HCPCS) when a fee is not listed in the Workers' Compensation Supplemental Medical Fee Schedule, Exhibit A.
7. Codes in Exhibit A at the end of Title 12, Chapter 15, Workers' Compensation Supplemental Medical Fee Schedule are amended.

A copy of the proposed rule changes will be made available for public viewing from the first working day that the legal notice appears in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island, through the day the public hearing is held, from Monday - Friday between the hours of 8:00 a.m. - 4:00 p.m., at the following locations of the Department of Labor and Industrial Relations, Disability Compensation Division:

830 Punchbowl Street, Room 209, Honolulu, Hawaii 96813
2264 Aupuni Street, Wailuku, Hawaii 96793
75 Aupuni Street, Room 108, Hilo, Hawaii 96720
81-990 Halekii Street, Room 2087, Kealahakua, Hawaii 96750
3060 Eiwa Street, Room 202, Lihue, Hawaii 96766.

A copy of the proposed rules may be viewed at <http://hawaii.gov/labor>. Copies can also be mailed to any interested party, upon written request to the Department of Labor and Industrial Relations, Disability Compensation Division, 830 Punchbowl Street, Room 209, Honolulu, HI 96813. Please enclose a self-addressed stamped 9 x 12 envelope with \$1.39 postage and a check for \$1.80 to cover the printing cost, payable in advance to the State Director of Finance.

Interested persons may present written or oral testimony at the time of the public hearing. All persons wishing to submit written testimony are requested to submit 5 copies of their written testimony before the public hearing to the Department of Labor and Industrial Relations, Disability Compensation Division, 830 Punchbowl Street, Room 209, Honolulu, HI 96813, or 5 copies may be submitted to the presiding officer at the public hearing. The public hearing will be continued, if necessary, to a time, date, and place announced at the scheduled hearing.

Interested persons unable to attend the public hearing shall submit five copies of their written testimony concerning the proposals to the Department of Labor and Industrial Relations, Disability Compensation Division, 830 Punchbowl Street, Room 209, Honolulu, Hawaii 96813. All submissions for the record must be received at or prior to the scheduled public hearing.

Auxiliary aids and services are available upon request by calling the Disability Compensation Division at (808) 586-9151 (voice), (808) 586-8847 (TTY), or 1-888-569-6859 (TTY neighbor islands). A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodations.

Dated: November 12, 2010

PEARL IMADA IBOSHI
Director
Department of Labor and Industrial Relations